Docket No. _____

IN THE

Supreme Court of the United States

STEPHEN MARTIN and SUSAN MARTIN,

Petitioners

v.

SANDERSON FARMS, INC., JAMES STUDENSKY, and FARMERS STATE BANK,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Certified Fed. R. App. P. 44(a) and (b) challenges that raise a single question are presented:

Whether 28 U.S.C. §§151, 157, 1334 (made bankruptcy courts units of the Federal District Courts); the Federal Arbitration Act (FAA) and the Texas General Arbitration Act (TGAA); and Article V of the Texas Constitution – are all similarly unconstitutional in that Congress lacks constitutional authority to confer Article III powers on judges who lack the life tenure and salary security of Article III judges.

TABLE OF CONTENTS

Question Presented i

Table of Authorities iv

Opinions Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

Statement of the Case 11

Reasons For Granting The Writ 17

A. The constitutional and statutory provisions questioned mightily contradict Article III of the U.S. Constitution and Supreme Court precedent established in *Marbury v. Madison* (1803), *McCulloch v. Maryland* (1819), and *Marathon* (1982).

B. The lower court decisions in this case contradict this Court's precedent in *Marathon* (1982) and cite pre-*Marathon* common bankruptcy law (in *Jackson Brewing* (5th Cir. 1980)) as the legal basis for their decisions.

C. The Fifth Circuit's unwillingness to review the District Court's denial of Petitioners' 28 U.S.C. § 157(d) motion requesting removal of the case from the bankruptcy court leaves Petitioner with no remedy and abridges Petitioners' access to an Article III court and jury right.

Conclusion 27

Appendix 1a-40a

A. Opinion of The United States Court of Appeals for the Fifth Circuit – dated/filed February 14, 2007 *
B. Memorandum opinion and order of the United States District Court for the Western District of Texas – affirming bankruptcy court orders including bankruptcy court order granting chapter 7 Trustee's motion to compromise controversy with Farmers State Bank pursuant to Bankruptcy Rule 9019 – dated April 23, 2005, filed April 25, 2005 **
C. Bankruptcy order granting Chapter 7 Trustee's motion to compromise controversy with Farmers State Bank pursuant to Bankruptcy Rule 9019 – with findings of fact and conclusions of law – dated/filed November 18, 2004 **
D. Order of the 20th Judicial District Court of Milam County, Texas granting plea in abatement/motion to compel arbitration, dated/filed August 23, 2002

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* This opinion remarks concerning filing fees. Appellants paid 4 separate filing fees to the 5th Circuit, which rendered a single opinion for 05-50440 and "members" 05-50736, 05-50800, 06-50546. As is customary procedure, fees for the 5th Circuit (after it denied Appellants' IFP motion) were collected in its behalf by the district court and payment is on record in the district court docket. Original bankruptcy petition and subsequent appeal fees required for district court review were collected in its behalf by the bankruptcy court and are on record in the bankruptcy docket.

** The Rule 9019 district court opinion and bankruptcy order (B and C above) cite an incorrect date for *Jackson Brewing* – which was a pre-*Marathon* 5th Circuit opinion based on 28 U.S.C. §1471 (rendered unconstitutional in *Marathon*).

E. Order of the 20th Judicial District Court of Milam County, Texas granting Plaintiffs' (the Martins') motion for non-suit – dated/filed March 18, 2003
F. Order of the United States District Court for the Western District of Texas – Denying Appellants' motion to remove the case from the bankruptcy court pursuant to 28 U.S.C. § 157(d) – dated April 23, 2005, filed April 25, 2005
G. Order of the United States District Court for the Western District of Texas – Granting Trustee's Motion To Dismiss Appeal By Stephen Martin and Susan Martin of Interim Order On Chapter 7 Trustee's Motion To Compromise and Settle Controversy With Sanderson Farms, Inc. Pursuant To Rule 9019 – dated/filed March 7, 2005
H. Interim order of the United States Bankruptcy Court for the Western District of Texas - on Chapter 7 Trustee's motion to compromise and settle with Sanderson Farms, Inc. pursuant to Bankruptcy Rule 9019 and to allow for bids to be received from any party in interest to purchase the causes of action sought to be compromised and settled – dated/filed February 2, 2005

TABLE OF AUTHORITIES

CASES

In re Aweco, Inc., 725 F.2d 293, 297 (5th Cir. 1984)..23

In re Clay, 35 F.3d 190 (5th Cir. 1994) (originated in Bankruptcy Court for the Western Division of Texas – 167 B.R. 445) 19, 21, 26

In re Hester 899 F.2d 361, 367 (5th Cir. 1990) 26

In re Jackson Brewing Co., 624 F.2d 599, 602-03 (5th Cir. 1980) 17, 22-25

Marbury v. Madison, 5 U.S. 137 (1803) 17, 21

McCulloch v. Maryland, 17 U.S. 316 (1819) 17. 19

Miranda v. Arizona, 384 U.S. 436 (1966) 20

Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).....11, 17-18, 20-26

United States v. Raddatz, 447 U.S. 667 (1980) ...24, 26

United States v. Will, 449 U.S. 200, 217-218 (1980). 19

Webb v. reserve Life Ins. Co. (In re Webb), 954 F. 2d 1102, 1103-1104 (5th Cir. 1992) 23

CONSTITUTIONS

U.S. Constitution, Article III 2, 19-21, 23, 26

U.S. Constitution, Amendment I 3, 17, 20

U.S. Constitution, Amendment V 3

U.S. Constitution, Amendment VII .3, 17, 20-21. 26-27

U.S. Constitution, Amendment XIV (§ 1) 3

Texas Constitution, Article I, § 1 .....4, 19-20

Texas Constitution, Article I, § 13 20

Texas Constitution, Article I, § 15 .....4, 20

The 1869 Texas Constitution, Article V, § 2 4

The 1869 Texas Constitution, Article V, § 6 ..

The current Texas Constitution, Article V, § 2(c) 4, 17-18

STATUTES

28 U.S.C. § 151.....17, 28

28 U.S.C. § 157(d) 5, 14, 25

28 U.S.C. § 1332(a)(1) 5, 12

28 U.S.C. § 1334 .....17, 28

28 U.S.C. § 1471 (1976 ed., Supp. IV), as added by § 241(a) of the Bankruptcy Act of 1978 (declared unconstitutional by *Marathon* and changed to 28 U.S.C. § 1452, effective July 10, 1984) 22, 24-25

28 U. S. C. §2403(a) 1

28 U. S. C. §2403(b) 1

The Federal Arbitration Act (Title 9 of U.S.C.) 17, 19-21

The Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code, Chapter 171) 17, 19-20

RULES

Fed. R. App. Proc. 44(A) and (B) 9, 14, 16

Fed. R. Bankr. Proc.9019 (essentially the same as former Rule 919) – amended in 1991...10, 13-16, 23-24

OTHER AUTHORITIES

Mitchell Hall, "*Granfinanciera, Northern Pipeline*, and 'Public Rights': May a Bankruptcy Judge Presides Over a Jury Trial?" 80 **Ky. L.J.** 499, 530 (1992) 27

Report of the United States Department of Justice Bankruptcy Working Group, Appendix F-2 (Sept. 1996).....28

The Federalist No. 79, at 472 (Alexander Hamilton) 18-19

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is not yet reported in the Federal Register, but is recorded at 2007 WL 509525 and is also reproduced in the Appendix at 1*a*. The opinions and orders of the district court, bankruptcy court, and state court are unreported, but are reproduced in the Appendix as listed in page *iii* of this Petition.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The Fifth Circuit's opinion was rendered on February 14, 2007. Pet. App. 1*a*.
Additionally, the constitutionality of an act of the U.S. Congress and an alteration to the Texas Constitution have been called into question and 28 U. S. C. §2403(a) may apply. The U.S. Fifth Circuit Court of Appeals certified these facts to the U.S. Attorney General. Notification required by Rule 29.4(b) has been made. The constitutionality of a Texas statute has been called into question and 28 U. S. C. §2403(b) may apply. The U.S. Fifth Circuit Court of Appeals certified this fact to the Texas Attorney General. Notification required by Rule 29.4(c) has been made.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U. S. Constitution, Article III, provides in part:

> Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may

from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The U.S. Constitution, Amendment I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

> peaceably to assemble, and to petition the government for a redress of grievances.

The U.S. Constitution, Amendment V provides in part:

> No person shall be .... deprived of life, liberty, or property, without due process of law.

The U.S. Constitution, Amendment VII provides in part:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

The U.S. Constitution, Amendment XIV (§ 1) provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Texas Constitution, Article I, § 1 provides in part:

> That the general, great and essential principles of liberty and free government may be recognized and established, we declare: Texas is a free and independent State, subject only to the Constitution of the United States.

The Texas Constitution, Article I, § 13 provides in part:

> All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

The Texas Constitution, Article I, § 15 provides in part:

> The right of trial by jury shall remain inviolate.

The 1869 Texas Constitution, Article V, § 2 and § 6 provided in part:

> SECTION II. The Supreme Court shall consist of three Judges, any two of whom shall constitute a quorum. They shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of nine years.
>
> SECTION VI. The State shall be divided into convenient Judicial Districts, for each of which one Judge shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of eight years, who shall after his appointment reside within the District, and shall hold a Court three times a year in each County thereof, at such time and place as may be prescribed by law; provided, that at the first general election after the 4th of July, 1876, the question shall be put to the people, whether the mode of election of Judges of the Supreme and District Courts shall not be returned to.

The current Texas Constitution, Article V, § 2(c) provides:

> Said Justices shall be elected (three of them each two years) by the qualified voters of the state at a general election; shall hold their offices six years; and shall each receive such compensation as shall be provided by law.

28 U.S.C. § 151 provides:

> In each judicial district, the bankruptcy judges *in regular active service shall constitute a unit of* the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

28 U.S.C. § 157(d) provides:

> (d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

28 U.S.C. § 1332(a) provides in part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between— (1) citizens of different States

28 U.S.C. § 1334 provides in part:

> (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
> (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. §1471 (1976 ed., supp. IV) provided in part:

> [t]he bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

28 U.S.C. §2403(a) provides:

> In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

28 U.S.C. §2403(b) provides:

> In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

Texas General Arbitration Act (Tex. Civ. Prac. Rem. Code, Title 7, Ch. 171) provides in part: § 171.002.

> (a) This chapter does not apply to:
>
> (1) a collective bargaining agreement between an employer and a labor union;
>
> (2) an agreement for the acquisition by one or more individuals of property, services, money, or credit in which the total consideration to be furnished by the individual is not more than $50,000, except as provided by Subsection (b);
>
> (3) a claim for personal injury, except as provided by Subsection (c);
>
> (4) a claim for workers' compensation benefits; or
>
> (5) an agreement made before January 1, 1966.
>
> (b) An agreement described by Subsection (a)(2) is subject to this chapter if:

(1) the parties to the agreement agree in writing to arbitrate; and

(2) the agreement is signed by each party and each party's attorney.

(c) A claim described by Subsection (a)(3) is subject to this chapter if:

(1) each party to the claim, on the advice of counsel, agrees in writing to arbitrate; and

(2) the agreement is signed by each party and each party's attorney.

Title 9, Chapter 1 of U.S.C. (the Federal Arbitration Act) provides in part:

CHAPTER 1--GENERAL PROVISIONS

Sec. 1 "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

> Sec. 5. Appointment of arbitrators or umpire
> If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

Fed. R. App. Proc. 44(A) and (B) provide:

> **(a) Constitutional Challenge to Federal Statute.** If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

> **(b) Constitutional Challenge to State Statute.** If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

The Fed. R. Bankr. Proc., Rule 9019 (essentially the same as former Rule 919) – amended in 1991[1] provides:

> (a) **Compromise.** On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.
>
> (b) **Authority to compromise or settle controversies within classes.** After a hearing on such notice as the court may direct, the court

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[1]This rule is amended to enable the United States trustee to object or otherwise be heard in connection with a proposed compromise or settlement and otherwise to monitor the progress of the case.

may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

(c) Arbitration. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

STATEMENT OF THE CASE

For almost five years, Susan Martin and Stephen Martin, Petitioners, have been repeatedly denied access to Article III courts. Everywhere the Martins have turned, non-Article III judges – who lack the life tenure and salary security of Article III judges, but have been empowered with or exercise Article III authority – have applied legislation and rules designed to circumvent the civil jury right of the individual citizen.

This case is a precedent-setting example of why this Court's reasoning and decision in *Marathon* (1982) must be likewise applied to: 1) Texas state judges (empowered by constitutional amendment that contradicts the U.S. Constitution); 2) arbitrator judges (empowered by arbitration legislation designed to circumvent or abridge the jury right of the individual citizen); and 3) bankruptcy judges (remain empowered and unfettered in the wake of *Marathon*.)

I. Case Background in Texas State District Court.

Petitioners Susan Martin and Stephen Martin are non-attorney United States citizens residing in Texas. In July 2002, the Martins filed suit against Sanderson

Farms, Inc. (SFI) and Farmers State Bank (the Bank). The state judge denied Susan Martin's jury request that had been made jointly with her husband and ordered her to arbitrate her causes of action against Sanderson Farms, Inc. (SFI) using American Arbitration Association (AAA) arbitrators. The causes were related to a 1999 labor Agreement that was between only Susan Martin and SFI. All of the Martins' causes of action that were related to the separate 1998 pre-construction investment contract (which involved all four parties) were stayed pending an AAA decision.

Four months after having received several thousand dollars in application fees, the AAA sent Susan Martin a $22,500 fee estimate as her half of the fee for a future 2-day hearing and the Martin's attorney withdrew. The AAA expressly refused to waive the unaffordable fees (citing lack of authority to waive arbitrators' judicial compensation) and dropped the application. No access was available to Federal Courts because at least one Defendant was a Texas resident.[2] With access to justice frustrated and their jury right circumvented by arbitration law, the Martins were unable to litigate the potential causes of action and filed a non-suit motion – which the state judge granted on March 18, 2003. [3]

II. Case Background in Bankruptcy Court

On July 14, 2003, the Martins filed chapter 7 bankruptcy. The record shows the Trustee knew debt financed by the Bank was not delinquent and that the Bank continued post-petition to accept money toward a

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[2] 28 U.S.C. §1332(a)(1) "*Diversity Legislation*" applied.

[3] The 5th Circuit record had a full copy of the original signed and file-stamped order, but the opinion misstates the date of the nonsuit order to be November 18, 2003 instead of March 18, 2003. See Pet. App. 31*a*

future annual 2005 payment; however, the Bank filed a motion to lift the stay – which was granted without scheduling a hearing date after the Trustee failed to object. Regardless, the order only granted the Bank permission to take necessary *legal* actions. A discharge order was granted to the Debtors on October 27, 2003; however, SFI then prematurely removed the annual flock from the poultry barns on the Martins' homestead and the Bank accelerated the non-delinquent Federally Guaranteed debt – taking the Martins' entire farm, barn equipment, and homestead in a non-judicial proceeding.

Almost a year later, Studensky (as Trustee of the former bankruptcy estate) agreed to accept $5,000 from the Bank in exchange for an order titled "*Compromise of the Controversy With Farmer's State Bank of Center, Texas, Pursuant To Bankruptcy Rule 9019*". The Martins filed an objection – citing Supreme Court precedent and arguing that there was no mature "*controversy*" to adjudicate because no adversarial proceeding was on file against either the Bank or SFI. In response, the bankruptcy judge called a hearing attended by all parties to this case and opened up the state court's nonsuit order[4] and added the Bank and Stephen Martin as parties to the state court's 2002 arbitration order.[5] The judge then granted Studensky's motion, and the Martins appealed.

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[4] The nonsuit order was one of many of the Martins' exhibits admitted into the bankruptcy record. The exhibit was submitted to show that absent an adversary proceeding, there was no mature "*controversy*", and absent the potential causes of action (which had been nonsuited), there was nothing to "*compromise*".

[5] Just prior to entry of the bankruptcy rule 9019 order granted to benefit the Bank, SFI submitted exhibits related to the attempted arbitration including a copy of a 1999 labor Agreement.

III. Case Background in District Court

The Appellants' primary designated appeal issue questioned the Bankruptcy Court's authority to compromise an imaginary controversy and transfer potential causes of action (i.e. the civil right of the individual to develop and litigate potential causes) against a former creditor – to that creditor – under the guise of a "*Bankruptcy Rule 9019 Compromise of the Controversy*". The Appellants argued on appeal that the bankruptcy judge lacked jurisdictional authority to transfer, sell, or adjudicate non-estate property including private causes of action.

Since the bankruptcy judge opened up and expanded the state court's orders, the Martins included SFI as a party to the appeal and invoked 28 U.S.C. § 157(d) in the District Court for removal of the case from the bankruptcy judge and to allow them to develop the causes of action into a mature controversy and exercise the jury right; however, that motion was subsequently denied, appealed, and docketed by the Fifth Circuit as a "member" appeal to 05-50440.[6] Also, narrow Title 11 appellate rules offer no remedy to allow Appellants to invoke a constitutional challenge while in the District Court, so the Appellants waited until the Federal Rules of Appellate Procedure became available in the Fifth Circuit before invoking Fed. R. App. P. 44(a) and (b) and raising the constitutional challenges.[7]

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[6] Petitioners paid 4 separate filing fees to the 5th Circuit, which rendered a single opinion for 05-50440 and "members" 05-50736, 05-50800, 06-50546

[7] The 5th Circuit opinion states they will not consider any issues not raised before the bankruptcy court, but the opinion fails to cite statute or constitution requiring constitutional challenges to be raised before a non-Article III judge.

The initial Fifth Circuit appeal (docketed as 05-50440, on March 18, 2005) resulted when nine weeks into the appeal (on February 2, 2005) the bankruptcy judge issued an "interim" order to "*clarify the current situation*", citing Tex. Prop. Code §42.002 as authority that causes of action are non-exemptible tangible assets owned by the estate. The order also announced intent to grant a duplicate "*Rule 9019 Compromise of the Controversy*" order accepting $5,000 from SFI. Appellants moved the district court to void the order for lack of bankruptcy authority/jurisdiction, and appealed the "interim" order to the district court due to the narrow time frame allowed for filing a notice of appeal.

On March 7, 2005 the District Court "Ordered that the appeal by Stephen Martin and Susan Martin of Interim Order on Chapter 7 Trustee's Motion to Compromise and settle Controversy with Sanderson Farms, Inc. Pursuant to Rule 9019 is hereby dismissed." The order additionally stated, "Ordered that the Bankruptcy Court may proceed with a hearing on Trustee's Motion to Compromise Controversy with Sanderson Farms, Inc."[8]

The Appellants appealed the foregoing district court dismissal (of the appeal of the "interim" order) to the Fifth Circuit. When the district court filed subsequent related orders (April 25, 2005, denying Appellants' motion to withdraw the reference of the

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[8] When the Martins filed a bankruptcy petition (July 14, 2003), scheduled the potential causes of action and Non-suit Order, and paid the filing fee, they did so because they believed in the "*liberty and justice for all*" promise that the case would finally be reviewed by an Article III Court; instead, they were caught in a pattern established by district courts that withholds Article III access and 1st Amendment petition rights from the bankrupt and the poor.

case from the bankruptcy court, and denying the appeal of the Rule 9019 "compromise of the controversy" with the Bank order), the Appellants designated new issues (related to the district order including the denial of the reference motion) and redesignated all other issues already on appeal.[9]

IV. Case Background in Fifth Circuit

The Fifth Circuit's opinion was given without oral argument. The Appellants invoked Fed. R. App. Proc. 44(a) and (b), and the Fifth Circuit certified the questions; however, even though the Appellants argued the questions in their original and reply briefs, the Fifth Circuit's opinion fails to address the Article III issue present in the certified questions.

On appeal to the Fifth Circuit, Appellants continued questioning the bankruptcy judge's authority to compromise an imaginary controversy and adjudicate or transfer private potential causes of action under the guise of a "*Bankruptcy Rule 9019 Compromise of the Controversy*"; however; notably, the Fifth Circuit's opinion never once uses the word "*controversy*" or "Rule 9019" – yet affirmed orders where authority to grant Rule 9019 motions was invoked and where both the original motion and order were titled "*compromise of the controversy*".

The Appellants also continued to argue that the bankruptcy judge lacks jurisdiction over non-estate property and that private causes of action are not bankruptcy estate property. The Fifth Circuit cited two common law Fifth Circuit cases to base the ownership

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[9] The standard of review used by the district court for the appeal of the Rule 9019 orders from its adjunct was not *de novo*.

of causes of action on whether the causes arose "pre-petition" or "post-petition". The opinion cites the exact same pre- *Marathon* common law decision (*Jackson Brewing*, 5th Cir. 1980) that was also cited by the bankruptcy and district court. No statute or constitution was cited in the opinion to warrant the common law practice of stripping private causes of action from a U.S. citizen if they file bankruptcy, and then deny the 7th Amendment jury right and 1st Amendment right to petition an Article III court for relief.

REASONS FOR GRANTING THE WRIT

A. The constitutional and statutory provisions questioned mightily contradict Article III of the U.S. Constitution and Supreme Court precedent established in *Marbury v. Madison* (1803), *McCulloch v. Maryland* (1819), and *Marathon* (1982).

28 U.S.C. §§151, 157, 1334 (made bankruptcy courts "units" of the Federal District Courts); the Federal Arbitration Act (FAA) and the Texas General Arbitration Act (TGAA); and Article V of the Texas Constitution – are all similarly unconstitutional in that Congress lacks constitutional authority to confer Article III powers on judges who lack the life tenure and salary security of Article III judges. Since the Petitioners' five year case history of their journey (with their constitutional rights being abridged at every turn in the road by non-Article III judges empowered with Article III powers either by state constitution or by Congress) began in the Texas state district court – that is where this argument must begin.

Article V of the Texas Constitution

In this instant case, Article V of the Texas constitution empowered a non-life tenured district judge with authority to adjudicate private civil causes of action, to apply law affecting Susan Martin's civil jury right, and to refer Susan Martin's labor-related causes of action against SFI to arbitrator judges – where those arbitrator judges hold influence over the continuance of the position held by the Texas judge.

Clearly, Texas District and Supreme judges are elected "political" judges empowered under Article V of the Texas Constitution to exercise the full realm of judicial powers reserved only for judges with life-tenure and salary protection. TEX. CONST. art.V. Applying the same reasoning exercised by this Court in *Marathon*,

> "this grant empowers [non-Article III] courts to entertain a wide variety of cases ...[including] ...causes of action. In addition to this broad grant of powers, Congress has allowed [non-Article III] judges the power to hold jury trials." *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982)

As non-life tenured judges, Texas judges are easily influenced by the other two branches of government and other judges. Texas judges rely on partisan campaign funds to gain and then to keep their judicial position and salary, and could easily be removed from their judicial position by the will of powerful party campaign contributors.

> "The Federalist Papers stressed the need for lifetime tenure and salary protection for judges.

'In the general course of human nature, a power over a man's subsistence amounts to a power over his will'. The Federalist No. 79, at 472 (Alexander Hamilton). The Framers guarded against this danger in Article III of the Constitution." *In re Clay*, 35 F.3d 190 (5th Cir. 1994);* "A Judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government." *United States v. Will*, 449 U.S. 200, 217-218 (1980). The Texas Constitution is "subject to the United States Constitution." TEX. CONST. art. I, § 1. The United States Constitution vests "the judicial power of the United States" only in judges with life tenure and salary security. U.S. CONST. art. III; "The U.S. Constitution and the laws made in pursuance thereof are supreme; they control the constitution and laws of the respective states and cannot be controlled by them." *McCulloch v. Maryland*, 17 U.S. 316 (1819).

The Federal Arbitration Act/Texas General Arbitration Act

The U.S. Congress lacked constitutional authority to enact the FAA – which confers non-Article III courts and judges with authority to adjudicate common law causes of action without a jury where the value in controversy exceeds $20. The history of this case shows that after waiving her jury right in a pre-dispute arbitration agreement, the unaffordable arbitrator fees demanded from Susan Martin were more than $22,500 and she was left with no legal way or remedy to retract the automatic jury waiver legislated by Congress in the Federal Arbitration Act. Not even the bankruptcy Trustee, James Studensky (Respondent) could afford to

pay those fees when the bankruptcy court opened the state-ordered nonsuit. (See Pet. App. 20a).

Notwithstanding the fact that the FAA contradicts Article III and abridges both the First and Seventh Amendments to the U.S. Constitution,[10] the problem is that Congress not only failed to enact legislation limiting arbitrator compensation amounts, but also Congress failed to enact legislation governing the proper time for parties to make a valid arbitration agreement.[11]

Additionally, only judges who enjoy life tenure and protection against salary cuts can exercise the "*judicial power of the United States*". *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 59 (1982) (Brennan, J., plurality opinion). The Supreme Court has carved out only three exceptions for non-Article III courts and judges: 1) judges for the District of Columbia and U.S. territories; 2) judges for the courts-martial; 3) judges that hear cases involving public rights. FAA judges fail to meet any of these three exceptions. Regardless of whether a case involves territories, public rights, or the military, an Article III court may employ non-Article III judges; however, FAA judges are not employees of an Article III court

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[10] "Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436 (1966); "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." TEX. CONST., art. I § 13; "The right of trial by jury shall remain inviolate." TEX. CONST., art. I § 15.

[11] The Texas General Arbitration Act does make some mention that an arbitration agreement may be formed when a dispute arises; however, the fact remains that arbitrators are non-Article III judges.

and have no Article III supervision. The FAA empowers judges with authority as broad as Article III judges. The only exceptions to the operation an FAA court's jurisdiction are contracts involving seamen and workers engaged in interstate or foreign commerce.

> "Nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Title 9, Chapter 1 of U.S.C. (the Federal Arbitration Act). The First Amendment to the U.S. Constitution states that "Congress shall make no law ... abridging... the right of the people to petition the government [including Article III courts] for redress of grievances". The FAA abridges that right. "An act of the legislature, repugnant to the constitution, is void". *Marbury v. Madison*, 5 U.S. 137 (1803). "Where a case gives rise to a Seventh Amendment right to a jury trial, Congress may not give jurisdiction to a non-Article III court." *In re Clay*, 35 F.3d 190 (5th Cir. 1994).[12]

28 U.S.C. §§151, 157, 1334

28 U.S.C. §§151, 157, 1334 made bankruptcy courts "units" of the Federal District Courts; however, district courts continue to automatically refer petitions to the bankruptcy courts where those "adjuncts" remain unfettered in exercising full Article III powers in the wake of *Marathon*. Bankruptcy judges are obviously

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[12] Regarding *Clay* – like the instant case, *Clay* originated in the Bankruptcy Court for the Western District of Texas where a husband and wife were denied access to the district court to exercise their jury right.

not being delegated "adjunct" responsibilities by the district courts. Part of the problem is that Congress failed to withdraw its broad grant of jurisdictional powers to bankruptcy courts over the "*causes of action owned by the debtor at the time of the petition for bankruptcy*" – which was specifically listed by this Court in *Marathon* to be one of the many reasons that 28 U.S.C. § 1471 (1976 ed., Supp. IV) was decided to be unconstitutional.

> See *Marathon Pipe Line Co.*, 458 U.S. 50, 55 (1982) and page 87, "We conclude that 28 U.S.C. § 1471 (1976 ed., Supp. IV), as added by § 241(a) of the Bankruptcy Act of 1978, has impermissibly removed most, if not all, of 'the essential attributes of judicial power' from the Art. III district court, and has vested those attributes in a non-Art. III adjunct. Such a grant of jurisdiction cannot be sustained as an exercise of Congress' power to create adjuncts to Art. III courts."

Congress (after being given a directive from this Court to withdraw the grant of jurisdictional authority over all specific items enumerated by this Court in *Marathon*) enacted 28 U.S.C. §§151, 157, 1334, but failed to create new legislation itemizing the specific *Marathon* items over which the new bankruptcy "units" lack jurisdiction.

B. The lower court decisions in this case contradict this Court's precedent in *Marathon* (1982) and cite pre-*Marathon* common bankruptcy law (in *Jackson Brewing* (5th Cir. 1980)) as the legal basis for their decisions.

The lower appellate courts contradict this Court's *Marathon* holding – that a *de novo* review standard must be utilized when reviewing a bankruptcy court's findings.

> "In *United States v. Raddatz,* 447 U.S. 667 (1980) the Court ...observed that the magistrate's proposed findings and recommendations were subject to *de novo* review by the district court...Under these circumstances, the Court held that the Act did not violate the constraints of Art. III. *Id.* at 683-684." *Marathon,* pg.79;

However, in this instant case, both the district court and the Fifth Circuit failed to do a *de novo* review of the bankruptcy court's Order to "Compromise the Controversy With Farmers State Bank of Center, Texas, Pursuant to Bankruptcy Rule 9019".

> See Pet. App. 1a, "When reviewing the approval of a motion to compromise, this court reviews for abuse of discretion. *In re Aweco, Inc.,* 725 F.2d 293, 297 (5th Cir. 1984); *In re Jackson Brewing Co.* , 624 F.2d 599, 602-03 (5th Cir. 1980) and Pet. App.10a, "When reviewing a bankruptcy court decision, the district court utilizes the same standard of review generally applied by a federal court of appeals. *Webb v. reserve Life Ins. Co. (In re Webb)*, 954 F. 2d 1102, 1103-1104 (5th Cir. 1992). The bankruptcy court's factual findings are accepted as true unless clearly erroneous."

Additionally, the bankruptcy court's Rule 9019 orders being appealed assert ownership and authority over Petitioners' causes of action (over Petitioners' repeated argument to the contrary) and contradict this Court's *Marathon* ruling that such a "broad grant of jurisdiction" to bankruptcy courts is unconstitutional.

> "This jurisdictional grant [in 28 U.S.C. § 1471(b) (1976 ed., Supp. IV)] empowers bankruptcy courts to entertain a wide variety of cases involving claims that may affect the property of the estate once a petition has been filed under Title 11. Included within the bankruptcy courts' jurisdiction are suits to recover accounts, controversies involving exempt property, actions to avoid transfers and payments as preferences or fraudulent conveyances, and causes of action owned by the debtor at the time of the petition for bankruptcy. The bankruptcy courts can hear claims based on state law as well as those based on federal law." *Marathon,* pg.54

When the bankruptcy judge entered its "Interim" Rule 9019 order of February 2, 2005 "*to clarify the current situation*" nine weeks into the appeal, it again referred to the debtors' scheduled potential causes of action and asserted its ownership and intent to "compromise" all "pre-petition and post-petition" causes of action for an additional $5,000 in a separate Rule 9019 order. (See Pet. App. 36a.). The district court cites *Jackson Brewing* (5th Cir.1990)[13]factors to be used

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[13] The district court opinion misstated the Jackson date to be 1990 instead of 1980.

by a bankruptcy court when making a compromise. The district court remained silent on the argument that the bankruptcy judge lacked jurisdictional authority.

> (See Pet. App. 10a) "The record establishes that Judge Kelly carefully applied the required Jackson factors in determining whether the compromise should be approved. See In re Jackson Brewing Co., 624 F. 2d 599 (5th Cir. 1990)."

Regardless, this Court's 1982 *Marathon* decision plainly overrules the Fifth Circuit's 1980 *Jackson Brewing* decision, which obviously relied on the unconstitutional 28 U.S.C. § 1471 (1976). (Ruled unconstitutional in *Marathon*)

C. The Fifth Circuit's unwillingness to review the District Court's denial of Petitioners' 28 U.S.C. § 157(d) motion (requesting removal of the case from the bankruptcy court) leaves Petitioner with no remedy and abridges Petitioners' access to an Article III court and jury right.

The Fifth Circuit declined to review the appeal of this district court order in an all inclusive statement without citing 28 U.S.C. § 157(d) at any point in the opinion. "We will not consider any issues on appeal that were not raised in the bankruptcy court." The Fifth Circuit failed to cite any statute or constitution that would require any citizen to raise such a motion as an issue in a non-Article III court. A district court is required to retain authority over the bankruptcy court – not the other way around.

> "In *United States v. Raddatz, supra,* ...it was noted that the magistrate considered motions only upon reference from the district court." *Marathon,* pg 79. "The bankruptcy court functions as an adjunct of the district court and, indeed, the constitutionality of the bankruptcy court's jurisdiction rests on that fact and on the careful supervision that the district court is bound to provide over the bankruptcy court". *In re Hester* 899 F.2d 361, 367 (5th Cir. 1990).

Petitioners moved the district court to remove its automatic reference of the case from the bankruptcy court to finally be able to exercise the jury right in an Article III court. The only Article III trial court available to U.S. citizens living in Texas is the Federal District Court. Authority to conduct jury trials is an essential attribute of an Article III court.

> "The Marathon plurality expressly deemed authority to conduct jury trials an "essential attribute of judicial power." *Marathon*, 458 U.S. at 85; *see also In re Clay*, 35 F.3d 190, 192 (5th Cir. 1994) ("authority to conduct a jury trial is an essential attribute" of judicial power). Indeed, the Fifth Circuit has gone so far as to state (albeit in *dictum*) that the "inadequacy of district court review of jury trials is fatal to delegation to adjuncts." *In re Clay*, 35 F.3d at 193. In so concluding, the Fifth Circuit presumed that, under *Marathon*, "adjuncts" must be subject to "adequate" (apparently *de novo*) appellate review. It then reasoned that *de novo* review of jury findings is impossible, both because the Seventh Amendment prohibits it

and because *de novo* review of jury findings is impractical. *Id.* at 193-94. *See generally*, Mitchell Hall, "*Granfinanciera, Northern Pipeline*, and 'Public Rights': May a Bankruptcy Judge Presides Over a Jury Trial?" 80 Ky. L.J. 499, 530 (1992) (concluding that Congress may not constitutionally permit bankruptcy judges to conduct jury trials)." Report of the United States Department of Justice Bankruptcy Working Group, Appendix F-2 (Sept. 1996)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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May, 2007

APPENDIX A – OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT – DATED/FILED FEBRUARY 14, 2007

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50440

In the Matter of:
STEPHEN CLYDE MARTIN
and SUSAN GAYLE MARTIN, Debtors

STEPHEN CLYDE MARTIN,
SUSAN GAYLE MARTIN,

v.

SANDERSON FARMS, INC.;
FARMERS STATE BANK;
JAMES STUDENSKY, Chapter 7 Trustee

Appeals from the United States District Court for the
Western District of Texas
(No. 6:05-CA-7)

(February 14, 2007)

Before DAVIS and STEWART, Circuit Judges, and GODBEY, District Judge. *

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* District Judge for the Northern District of Texas, sitting by designation.

Appendix A

PER CURIAM: **

Debtors appeal pro se from multiple orders of the bankruptcy court. We dismiss many of the Appellants' claims on procedural grounds and affirm the district court.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 14, 2003, Steven Martin and Susan Martin filed for voluntary Chapter 7 bankruptcy. On the same day, they filed their schedules of assets and liabilities. The schedule of assets included a potential cause of action against Sanderson Farms, Inc. ("Sanderson") and/or Farmers State Bank ("Farmers State"), valued at $0. This potential cause of action arose from a series of agreements between Sanderson and Farmers State for the Martins to construct egg hatching barns for Sanderson with financing from Farmers State and for Susan Martin to work as a hatching egg producer. The Martins alleged fraud, deceptive trade, breach of contract, and other causes of action in a suit against Sanderson and Farmers State filed in Texas in 2002; the case was non-suited on November 18, 2003, because of the presence of a mandatory arbitration clause in the contracts between Sanderson, Farmers State, and the Martins. The Martins did not pursue arbitration to completion. The bankruptcy court lifted the automatic stay against Farmers State, a creditor of the Martins, on September 3, 2003.

The Trustee, James Studensky, objected to the schedules, and on September 23, 2003, the Martins

** Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

filed an amended schedule that listed the potential cause of action as having an unknown value. The Martins did not attempt to exempt the cause of action in either their initial or amended schedule.

The bankruptcy court granted the Martins a discharge on October 27, 2003. In September 2004, the Trustee filed a motion in bankruptcy court to compromise the Martins's claims against Farmers State Bank. The Martins objected to this motion and filed several of their own motions, including a motion to avoid fraudulent transfer, a motion to declare themselves "persons aggrieved," a motion to avoid lifting the stay against Farmers State, and motions for fines and sanctions against Sanderson and Farmers State. The bankruptcy court, after conducting a fact-finding hearing, granted the Trustee's motion to compromise on November 18, 2004, specifically noting that none of the Martins's claims against Sanderson were effected by the order. The judge also denied all of the Martins's motions except for their motion to declare themselves persons aggrieved.

The Martins appealed these unfavorable determinations in a single notice of appeal to the district court. While the district court was considering the Martins's appeal, the Trustee filed a motion in district court to compromise the Martins's claims against Sanderson. On February 2, 2005, the bankruptcy court entered an interim order on the motion to compromise, setting a hearing date and a bidding deadline. The Martins then filed a notice of appeal of the interim order with the district court, amending their initial notice of appeal to include the interim order as well. The district court dismissed the

appeal of the interim order on the motion of the Trustee and directed the bankruptcy court to proceed with its consideration of the Trustee's motion. The Martins appealed the dismissal, commencing their appeal before this court on March 18, 2005. The district court then affirmed all of the orders entered by the bankruptcy court on November 18, 2005, adopting the factual findings of the bankruptcy court as well. The Martins then amended their notice of appeal with this court to include all of the motions that the district court upheld.

The Martins filed a motion in the district court, asking to be allowed to proceed in forma pauperis, which the district court denied. The Martins then filed a similar motion in this court, which was also denied.

The bankruptcy court, in the meantime, continued its consideration of the Trustee's motion to compromise the Martins's claims against Sanderson. The bankruptcy court approved the compromise on May 20, 2005. The debtors then filed a second amended notice of appeal with this court, adding the bankruptcy court's order approving the compromise with Sanderson. On May 27, 2005, Sanderson filed a timely motion in the bankruptcy court to vacate the May 20, 2007 order to correct a misstatement of fact under Fed. R. Civ. P. 59(e) and Bankruptcy Rule 9023. That motion is still pending in the bankruptcy court.

II. DISCUSSION

Generally, in a bankruptcy appeal, we apply the same standard of review to the bankruptcy court's decision as applied by the district court. *E.g., In re Amco Ins.* , 444 F.3d 690, 694 (5th Cir. 2006). Findings of fact are reviewed for clear error, and legal conclusions are reviewed de novo. *Id.* When reviewing the approval of

a motion to compromise, this court reviews for abuse of discretion. *In re Aweco, Inc.* , 725 F.2d 293, 297 (5th Cir. 1984); *In re Jackson Brewing Co.* , 624 F.2d 599, 602-03 (5th Cir. 1980). A bankruptcy court's lift of an automatic stay is also reviewed for abuse of discretion. *In re Chunn* , 106 F.3d 1239, 1242 (5th Cir. 1997).

A.

We must initially resolve, however, what issues are properly raised in this appeal. In bankruptcy appeals, appellants are required to file a statement of the issues to be presented in the appeal separate from the notice of appeal. Fed. R. Bankr. P. 8006. If an issue is not included in this statement, even if it was raised in and decided by the bankruptcy court, it is not preserved for appeal and is waived. *In re GGM, P.C.* , 165 F.3d 1026, 1032 (5th Cir. 1999). The Martins did not include any mention of their motions for fines and sanctions against Farmers Bank and Sanderson in their Fed. R. Bankr. P. 8006 notice; accordingly, they waived the right to appeal the bankruptcy court's denial of these motions.

Additionally, we will not consider any issues on appeal that were not raised before the bankruptcy court. *In re Ginther Trusts* , 238 F.3d 686, 689 & n.3 (5th Cir. 2001). The Martins raise many issues in their brief, including challenges to the composition of the chicken feed provided by Sanderson and the use of cell phones in courthouses, that were not decided by the bankruptcy court. We do not consider any of these issues in this appeal. All additional claims made by the Martins that are not separately considered below are dismissed because they were not raised before the bankruptcy court and/or they were not included in the debtors' Fed. R. Bankr. P. 8006 notice.

B. We also must consider our jurisdiction to hear this appeal. Our jurisdiction stems from 28 U.S.C. § 158(d), allowing us to review bankruptcy determinations of either a district court sitting as an appeals court or a bankruptcy appellate panel. We do not have jurisdiction over appeals from the bankruptcy court or district court when certain post-judgment motions have been filed, including timely motions to amend under Fed. R. Bankr. P. 9023. Fed. R. Bankr. P. 8002(b); *see also In re Transtexas Gas Corp.* , 303 F.3d 571, 579 (5th Cir. 2002). Therefore, we dismiss the Martins's appeal from the bankruptcy court's May 20, 2005 order to compromise the claims of Sanderson for lack of jurisdiction. The motion was never considered by either a district court sitting as an appeals court or a bankruptcy appellate panel, and the Martins did not seek leave to appeal under 28 U.S.C. § 158(a) and Fed. R. Bankr. P. 8003. Additionally, Sanderson filed a timely motion to amend the judgment, depriving any appellate court of jurisdiction under Fed. R. Bankr. P. 8002(b). [1]

We also dismiss the Martins's appeal from the denial of their motion to vacate the lift of the stay against Farmers State for being untimely. Any appeal of the bankruptcy court's lift of the stay must have been filed

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[1] We also dismiss the Martin's appeal from the February 2, 2005 order of the bankruptcy court setting a hearing on the Trustee's motion to compromise the claims against Sanderson because that appeal was not from a final order and that order is now moot in light of the bankruptcy court's May 20th order. Accordingly, the joint motion of the Trustee and Sanderson to dismiss the appeal of this order is granted.

within ten days in order to be timely. Fed. R. Bankr. P. 8002(a). The stay was lifted on September 3, 2003, and the Martins's did not request relief from this order until October 13, 2004, and did not file an appeal with the district court until November 29, 2004. Therefore, the Martins's motion was untimely, and the order lifting the stay had become final and unappealable.

We also dismiss as moot the Martins's appeal from the district court's denial of their motion to proceed in forma pauperis in this appeal. This court has already considered and denied that motion, and regardless, the appeal is now being considered on its merits despite any possible deficiencies in the payment of fees.

C.

The Martins's appeal the district court's determination that the bankruptcy court was correct that they did not have standing to file a motion to void fraudulent transfers. The Martins did not move to void the transfer under 11 U.S.C. § 522, which grants debtors limited rights to avoid certain liens on exempted property, an issue that is not raised here where the Martins did not exempt their causes of action against Farmers Bank and Sanderson. Instead, the Martins relied on 11 U.S.C. §§ 544, 547(b), 548(a), & 550, which by their terms apply to only the Trustee. While creditors may in some limited circumstances have the right to bring these actions, *see In re Dierschke* , 975 F.2d 181, 182 n.3 (5th Cir. 1992); *In re Natchez Corp. of W. Va.* , 953 F.2d 184, 187 (5th Cir. 1992) (holding that if a creditor seeks authorization from the bankruptcy court, there may be circumstances where a creditor is entitled to bring an action under 11 U.S.C. § 549); *see also In re Porras* , 312 B.R. 81, 94 (W.D. Tex. Bankr. 2004)

(holding that in some circumstances a fraudulent conveyance action may not "belong" to the estate exclusively), this case does not embody any of those circumstances. We affirm the determinations of the district court and the bankruptcy court on the Martins's motion to void fraudulent transfers.

Finally, we must consider the Martins's appeal from the motion to compromise the claims with Farmers State, approved by the bankruptcy court on November 18, 2004, and approved by the district court on appeal on April 25, 2005. Section 541 of the Bankruptcy Code creates, upon the filing of bankruptcy, an estate that consists of "all legal or equitable interests of the debtor in property as of the commencement of the case," including causes of action that belong to the debtor at the time the case is filed. *E.g., In re Swift* , 129 F.3d 792, 795 (5th Cir. 1995). The Martins included their possible causes of action against Farmers State and Sanderson on their schedules, and they did not attempt to exempt these causes of action.

When reviewing a bankruptcy court's approval of a compromise, the appellate court should "assure that [the] compromise is truly 'fair and equitable' and 'in the best interest of the estate.'" *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson* , 390 U.S. 414, 425 (1968) [hereinafter *TMT Trailer*]). This assurance comes from seeing that the bankruptcy judge was apprised of all the relevant facts to compare the possible rewards of litigation with the terms of the compromise. *Id.* The court should set forth its findings on "(1) the probability of success in the litigation . . .

(2) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, and (3) all other factors bearing on the wisdom of the compromise." *Id.* (citing *TMT Trailer*, 390 U.S. at 424-25). Having reviewed the bankruptcy court's order approving the compromise after conducting a fact-finding hearing, we find no abuse of discretion in his approval of the compromise of those claims that belonged to the estate. [2]

The Martins also challenge the compromise on the basis that it takes from them the right to file lawsuits against Farmers State Bank that might arise in the future. The motion to compromise seeks to settle claims "that the Bankruptcy Estate has against Farmers State Bank." The only claims belonging to the estate are those that had accrued at the time of the Martins's bankruptcy petition. *See, e.g., In re Educators Health Trust* , 25 F.3d 1281, 1284 (5th Cir. 1994) ("Whether a particular state cause of action belongs to the estate depends on whether under applicable . . . law the debtor could have raised the claim as of the commencement of the case."); *see also Swift* , 129 F.3d 792. We find no abuse of discretion in the lower courts' approval of the compromise.

III. CONCLUSION

We affirm the judgment of the district court. Additionally, we grant the joint motion of the Trustee and Sanderson to dismiss the appeal of the interim order and deny the joint motion of the Trustee and Farmers State to dismiss the appeal of the motion to compromise.

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[2] The joint motion by the Trustee and Farmers State Bank to dismiss this portion of the appeal is denied.

APPENDIX B – MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, WACO DIVISION – AFFIRMING BANKRUPTCY ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH FARMERS STATE BANK PURSUANT TO BANKRUPTCY RULE 9019.
DATED APRIL 23, 2005. FILED APRIL 25, 2005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

DOCKET NO. W-05-CA-007

In Re:
STEPHEN MARTIN and SUSAN MARTIN, Debtors

STEPHEN MARTIN and SUSAN MARTIN,
Appellants

v.

SANDERSON FARMS, INC., JAMES STUDENSKY, and FARMERS STATE BANK,
Appellees

MEMORANDUM OPINION AND ORDER

This is an appeal from a number of orders of the United States Bankruptcy Court for the Western District of Texas. Having thouroughly reviewed the record, the Court is persuaded the Bankruptcy Judge's

rulings should be affirmed. Appellants Stephen Martin and Susan Martin ("Martins" or "Debtors") appeal the following rulings of the bankruptcy Court:

1. Order Granting in Part and denying in Part Debtors' Motion to Declare That Debtors are Persons Aggrieved, and to Avoid Order Lifting Stay Against Farmers State Bank.
2. Order Granting Chapter 7 Trustee's Motion to Compromise and Settle Controversy with Farmers State Bank Pursuant to Bankruptcy Rule 9019
3. Order Denying Debtors' Motion to Avoid Fraudulent Transfers
4. Order Denying Debtors' Motion to Issue and Collect Fines Against Farmers State Bank
5. Order Denying Debtors' Motion to Issue and Collect Fines Against Sanderson Farms, Inc.

When reviewing a bankruptcy court decision, the district court utilizes the same standard of review generally applied by a federal court of appeals. Webb v. reserve Life Ins. Co. (In re Webb), 954 F. 2d 1102, 1103-1104 (5th Cir. 1992). The bankruptcy court's factual findings are accepted as true unless clearly erroneous, while conclusions of law are reviewed de novo. In re Foster Mortgage Corp., 68 F. 3d 914, 916 (5th Cir. 1995). Mixed questions of law and fact, and questions concerning the application of law to the facts, are also reviewed de novo. In re Bass, 171 F. 3d 1016, 1021 (5th Cir. 1999).

The Martins entered into a hatching egg producer contract with Sanderson Farms, Inc. ("SFI"). With financing from Farmer's State Bank ("FSB"), the Martins erected two chicken houses on their property,

which was connected to their homestead. FSB placed a lien on the non-homestead property to secure the loan. The Martins have included numerous exhibits which indicate they experienced numerous problems with SFI regarding the producer contract, which resulted in the Martins filing a suit in state court against both SFI and FSB. SFI moved to enforce the arbitration clause in the producer contract. Because the Martins were unable to pay the arbitration fee, they voluntarily dismissed the suit. In early 2003, Susan Martin requested a leave because a medical condition precluded her from maintaining the chickens as required by the contract. SFI informed the Martins that their producer payments would be reduced by the amount SFI was required to pay to continue caring for the chickens. On July 14, 2003, the Martins filed a voluntary petition under Chapter 7.

The real property which was subject to FSB's lien was valued by the Martins at $190,635, while $236,300 was owed to the Bank. The Martins did not list the property as exempt, and indicated in their Statement of Intention that they would "surrender" the property. A month after the Chapter 7 filing, FSB filed a motion to lift the automatic stay in order to proceed with foreclosure against the property. Neither the Martins nor the Trustee opposed the motion.

In their Schedule B, the Martins noted that they had a potential cause of action against SFI and/or FSB which they valued at $0.00. In an amended Schedule B, the Martins listed the value of the cause of action as "unknown".

The Trustee determined that the best course of action to resolve the potential cause of action, was to

reach a settlement. FSB agreed to pay $5,000 for a release of all claims and causes of action the estate might have against the Bank and its directors. Proper notice was given to all creditors, and the only objection was voiced by the Martins.

Although they have included a number of "issues" in their appeal, the Martins' central complaint is that the Bankruptcy Court erred in approving the Trustee's request to settle with FSB. They have, however, presented nothing to refute the Findings of Fact made by the Bankruptcy Court. Accordingly, those Facts are adopted.

The Martins have additionally made no compelling argument which would justify reversing the Bankruptcy Court's decision. The record establishes that Judge Kelly carefully applied the required Jackson factors in determining whether the compromise should be approved. See In re Jackson Brewing Co., 624 F. 2d 599 (5th Cir. 1990). It was clearly better for the creditors to have $5,000 added to the bankruptcy estate rather than to spend approximately $16,000 (at least) of the estate's money to pursue a lawsuit which had little (if any) chance of success.

As to the Martins other claims, Judge Kelly carefully and thoroughly explained the applicable bankruptcy laws at the hearing on November 3, 2004. As Judge Kelly noted, the Martins had no standing to attempt to avoid a "fraudulent" transfer and there was no authority for him to issue and/or collect a fine from SFI. Additionally, the Martins did not timely object to the lifting of the automatic stay requested by FSB. No contemporaneous objection was made to FSB's request to lift the stay; the Martins' motion was filed over a

year after the stay was lifted. Finally, the Martins had no standing to object to the foreclosure of the property because they did not list it as exempt.

Accordingly, the Bankruptcy Court's rulings are AFFIRMED. Any motions not previously ruled upon by this Court are denied.

IT IS SO ORDERED.
SIGNED this 23rd day of April, 2005.

s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
United States District Judge

APPENDIX C – ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TEXAS GRANTING CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH FARMERS STATE BANK, CENTER, TEXAS PURSUANT TO BANKRUPTCY RULE 9019 – WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

DATED AND FILED NOVEMBER 18, 2004

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS

Case No. 03-61633-LEK
Chapter 7 Petition

In Re: STEPHEN CLYDE MARTIN and
SUSAN GAYLE MARTIN, Debtors

ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH FARMERS STATE BANK, CENTER, TEXAS PURSUANT TO BANKRUPTCY RULE 9019

Before the Court is the Trustee's Motion to Compromise and Settle Controversy with Farmers State Bank, Center, Texas ("Bank") Pursuant to Bankruptcy Rule 9019 filed September 9, 2004 (Doc.#41). The Debtors filed a Verified Objection and Motion to Deny the Compromise on September 29, 2004 (#43), and Supplemental Facts and Memorandum Supporting the

Appendix C

Objection and Motion to Deny on October 4, 2004 (#46). On November 3, 2004, the Court held a hearing on the motion to compromise and settle as well as the Debtors' objection thereto. At the hearing, the Chapter 7 Trustee James Studensky ("Trustee") appeared, the Debtors appeared pro se, and the Bank appeared through its counsel. The Court has entered findings of fact and conclusions of law pursuant to Bankruptcy Rules 9014 and 7052 and Federal Rule of Civil Procedure 52. Based upon those findings of fact and conclusions of law, it is therefore

ORDERED that the Trustee's Motion to Compromise and Settle Controversy with Farmers State Bank, Center, Texas Pursuant to Bankruptcy Rule 9019 is granted because the settlement proposed therein is in the best interest of the creditors of the estate, including those with timely-filed and untimely-filed claims, it is further

ORDERED that all objections asserted by the Debtors against the settlement are denied.

SO ORDERED.

SIGNED this 18 day of November, 2004.

s/ Larry E. Kelly
LARRY E. KELLY
UNITED STATES CHIEF BANKRUPTCY JUDGE

Appendix C

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH FARMERS STATE BANK, CENTER, TEXAS PURSUANT TO BANKRUPTCY RULE 9019

Before the Court is the Trustee's Motion to Compromise and Settle Controversy with Farmers State Bank, Center, Texas ("Bank") Pursuant to Bankruptcy Rule 9019 filed September 9, 2004 (Doc.#41). The Debtors filed a Verified Objection and Motion to Deny the Compromise on September 29, 2004 (Doc. #43), and Supplemental Facts and Memorandum Supporting the Objection and Motion to Deny on October 4, 2004 (Doc. #46). On November 3, 2004, the Court held a hearing on the motion to compromise and settle as well as the Debtors' objection thereto. At the hearing, the Chapter 7 Trustee James Studensky ("Trustee") appeared, the Debtors appeared pro se, and the Bank appeared through its counsel. The Trustee seeks to approve his negotiated compromise and settlement with the Bank pursuant to Bankruptcy Rule 9019 in which he, as representative of the Debtors' estate, will give a release of all claims and causes of action the estate has or may have against the Bank and its directors, officers, agents, and employees in return for the payment of $5,000 from the Bank[1].

[1]The Court notes that the Trustee's motion to compromise controversy specifically states that the subject settlement does not release any claims the estate may have against Sanderson Farms, Inc. or any other parties.

Appendix C

Proper notice was given to all creditors, and only the Debtors objected. The Trustee proffered his testimony to the Court while under oath. The Debtors provided a lengthy argument to the Court, along with exhibits. At the close of the hearing, the Court took the matter under advisement to more completely review the Debtors' schedules and other pleadings. After considering all of the evidence received at the hearing, as well as the pleadings on file, the following represents the Court's findings of fact and conclusions of law made in this contested matter pursuant to Bankruptcy Rules 9014 and 7052 and Federal Rule of Civil Procedure 52.

Background

These Debtors entered into a Hatching Egg Producer Contract with Sanderson Farms, Inc. ("SFI") about February 1998. At the hearing, the Debtors submitted an extensive set of documents, letters, transcripts of conversations, copies of news articles and similar paperwork relating to issues involving Sanderson Farms, which collectively were admitted as Debtors' Exhibits. These exhibits were admitted solely in relation to the Debtors' objection to the Trustee's Motion to Compromise and Settle Controversy. However, the issue presented by the Trustee's motion to compromise and settle involves claims against the Bank, not SFI.

Findings of Fact

1. The Debtors filed this voluntary chapter 7 on July 14, 2003.

2. The Debtors scheduled their primary real property as being 76.24 acres of land valued at $190,635 and being

subject to a lien in favor of the Bank in the amount of $236,300 (hereinafter the "Property").
3. In their Statement of Intention, the Debtors indicated that they would "surrender" this Property.
4. The Debtors did not claim this Property as exempt.
5. On August 7, 2003, the Bank filed a Motion for Relief from the Automatic Stay in order to proceed with foreclosure against the Property.
6. The Debtors did not oppose this motion.
7. The Trustee did not oppose this motion.
8. In Schedule B in answer to question #33, the Debtors indicated that they had a "potential cause of action against Sanderson Farms, Inc and/or Farmer's State Bank," which they valued as having a $0.00 value. See Schedule B of Petition, Answer to Question 33, filed July 14, 2004 (Doc. #2). In a later amended Schedule B, the Debtors listed the value of this asset as "unknown." See Amended Schedule B of Petition, Answer to Question 33, filed September 23, 2004 (Doc. #20).
9. The Trustee proffered as his testimony made under oath all of the efforts he made to discover and investigate the "claim" the Debtors allege exists against the Bank, as follows:
a. Investigation. The Trustee stated he did extensive investigation of the Debtors' alleged causes of action. He advises that he met with the debtors for at least 4 hours, he reviewed documents they left with him for another 2-3 hours, and he spent time discussing the issues on the telephone with the Debtors' prior bankruptcy attorney.
b. Duty to Creditors of the Estate. The Trustee stated he has a duty to all creditors of the estate, those with

timely-filed claims and those with untimely-filed claims, to maximize the monetary return to all creditors. He received $16,685.00 from Sanderson Farms, Inc. (SFI) as production income and bonus proceeds from the last flock of hens on the Debtors' farm. This amount will pay all timely-filed claims 100%.

c. Claims filed against the Estate. The Trustee stated his records show, to date, that there have been $51,141.56 in total claims filed against the estate, including timely-filed claims and untimely filed claims. This dollar amount includes the Trustee's fees and expenses.

d. Valuing a Cause of Action. The Trustee explained, in depth, how he values a cause of action, one of the hardest tasks he must do as a trustee because, should he decide to pursue a cause of action, he must use estate assets to do so, versus taking an offered monetary settlement that requires little expenditure of estate assets to obtain. He looks at the following factors to determine a value of a lawsuit: liability, damages, the ability to collect any award, and other intangibles, such as the proper forum for the lawsuit, any obstacles to be faced in pursuing the suit, and the credibility of the estate's witnesses.

e. Debtors' State Court Suit Against the Bank. The Trustee noted that the Debtors filed a prior lawsuit against the Bank and SFI in state court in Milam County, alleging claims of conspiracy to defraud, illegal inducement to enter the agreement, misrepresentation by the Bank and SFI regarding the cost of construction of the hen barns and the expenses involved in operating the chicken growing business, and DTPA claims. The state court ordered the parties to

arbitration through the American Arbitration Association based upon the arbitration clause, presumably in the producers agreement. Debtors non-suited the state court case and did not proceed with arbitration because they did not have the $22,500 fee required by the American Arbitration Association.

f. Procedural Hurdles to Overcome if Suit Brought. The Trustee stated that, if he was to pursue the Debtors' alleged causes of action, first, he would have to challenge the arbitration clause. Despite the fact that the Debtors argued their belief that the arbitration clause should be challenged because it was unilateral, the Trustee stated he talked with them at length regarding the difficulty of setting aside an arbitration clause, especially because a court had found it binding and had ordered the parties to abide by it. Additionally, the Trustee stated he does not have the $22,500 fee to proceed with arbitration. To the extent that he used any estate funds to pay such a fee, he would be using estate assets that would otherwise be paid to creditors to pursue a very difficult lawsuit.

g. The Alleged Causes of Action. The Trustee also discussed the causes of action alleged by the Debtors to exist against the Bank as follows:

(1). Fraud in the Inducement. The Debtors signed a producers contract with SFI under which they were "hatch egg producers." To finance their venture, Debtors obtained financing from the Bank and signed two assignments of income from SFI to the Bank. In the first assignment, they assigned 50% of their monthly income from SFI to the Bank, and in the second one, they assigned 60% of their monthly income from SFI to the Bank. Now, the Debtors believe that

these assignments are null and void and were fraudulently induced. However, the Trustee stated he can find no evidence of fraud or any other evidence to cast doubt on the agreements.

(2). The Producers Agreement. The Trustee stated he did not assume this contract. Not only is it likely a personal service contract, but he considers it was likely breached by the Debtors pre-petition when they quit the chicken growing operation. Also, the Trustee stated he has no experience raising chickens and could not subject the estate to liability for taking on such an operation. The Trustee discredits the Debtors' belief that they are entitled to the 15 years of production income under the producer's agreement whether they are farming or not because the agreement was to last 15 years. Instead, he believes any right to money terminated when the Debtors terminated their work of growing chickens.

(3). Foreclosure of the Farm. The Debtors valued the Property on which they operated the chicken operation on their schedules at $190,635 and listed the Bank as having a debt of $237,300. The Trustee questioned the Debtors about the condition of the Property and learned that there were chickens on the Property. He learned that the Property would have to be cleaned and that there might be environmental issues present. Thus, he faced a situation in which there was no equity value in the property, and he could incur clean up costs should he attempt to hold on to the Property. Instead, he considered the proper route was to not oppose the Bank's motion to lift stay. The Debtors' schedules did not claim this Property as exempt, the Debtors's Statement of Intention indicated that the Property

would be surrendered. Further, the Debtors did not oppose the Bank's motion for relief from the automatic stay.

(4). Irregularities in the Documents. The Debtors allege irregularities with the documents they signed with the Bank. However, given the Trustee's experience representing financial institutions, after he reviewed all the documents, he stated he could find no such alleged irregularities. Instead, he considered all of the documents appeared to be "regular" on their face. He could find no evidence of any fraudulent inducement by the Bank to cause the Debtors to enter into the agreements. Additionally, he asserted that the cause of action of fraud is difficult to prove, and here, he has no documents to support such a claim. The Property has been foreclosed, making it possible for the Bank to assert laches or waiver by the Debtors as defenses to a fraud claim. Also, the Trustee cannot determine the Debtors have suffered any damages, given the undersecured status of the Bank and the additional clean up costs that were likely to be required for the Property. Also, the Trustee asserts that the Debtors have no claim for fraud or irregularity in the documents by their assertion that the deed of trust covering the Property was not renewed and extended when the debt they owed the Bank was renewed and extended. The Trustee stated that case law is clear: a note can be renewed and extended without renewing and extending the securing deed of trust. The Trustee has tried a similar case to this situation but which had an additional, and more attenuating fact, of the presence of a third party presenting this claim, and which claim was unsuccessful. In this situation, the law is even stronger

against the Debtors' argument because the Debtors were parties to the transaction with the Bank; thus, the claim of invalidity of the debt and lien has even less merit when brought by one of the parties to the challenged transaction. Thus, the Trustee believes there is no wrongful foreclosure issue: there is no evidence to support any element of a wrongful foreclosure, and, even if the foreclosure was to be set aside, the Trustee would have a large debt owed to the Bank to resolve; a situation prejudicial to the other creditors of the estate.

(5). Mechanics and Materialman's Lien. The Trustee believes there is no claim, despite the Debtors' asserted belief, of the Bank's holding an improper mechanics and materialman's lien on more than 50 acres of the property. The Trustee stated that the Texas Property Code section cited by Debtors is not applicable here because that section governs a situation involving an involuntary lien affidavit being filed by someone claiming they have supplied goods or services and not been paid. As in this situation, the Trustee states that there is no prohibition against a person offering a consensual mechanics and materialmen's lien on any amount of acreage they own.

h. Need to Pay an Attorney. In order to pursue any of the causes of action the Debtors believe exist, the Trustee stated he would have to hire another attorney or hire himself, whose fees would be paid by the estate. If on a direct fee basis, the Trustee would deplete all money he holds, and likely more, to pay an attorney. Further, he does not believe that an attorney would accept the representation on a contingency fee basis because that attorney would see the tremendous amount of work that must be done to pursue the alleged claims,

given that the claims are tort-based causes of action which would be used to undue other legal actions that have occurred, such as the foreclosure.

Additionally, any such suit would require the taking of many depositions, resulting in high expenses. Also, to pursue such a lawsuit would delay the closing of the estate, causing prejudice to the other creditors. Additionally, the timely-filed claims that can now be paid 100% would be asked, in effect, to use the money they would otherwise receive to fund litigation which might only result in more money being brought into the estate for the payment of the untimely-filed claims. The total claims listed on Schedule F of the Debtors' Schedules exceed $509,000. Should any of these claimants file claims now, such claimants would be entitled to be paid prior to the Debtors receiving any funds. Thus, the Debtors want the estate to pursue litigation which poses a great rise to creditors who have filed claims and offers to them minimal to no chance of recovering any money, even if successful. The Court notes that the creditors at risk have voiced no opposition to the proposed settlement in which the estate will receive $5,000 for little to no related cost to the estate.

i. Abandonment of the Alleged Causes of Action. The Trustee repeated that he has a fiduciary duty to all creditors, including those who file timely claims and those who file untimely claims. His job is to maximize the return to all creditors. He considered abandoning the alleged causes of action, however, to do so means passing up the $5,000 that has been offered by the Bank to buy peace. With this additional $5,000 in the estate,

the Trustee will increase the return to untimely-filed claims from about 7% to 30 to 35%.

10. Farmers State Bank's Position. Attorney Sam Kinslow proffered his testimony that the Bank disputes it has any liability for the alleged causes of action the Debtors claim exist and believes there is no value to this alleged asset scheduled by the Debtors. For example, the Bank believes that all the alleged causes of action were barred by limitations prior to the Debtors filing suit in state court in Milam County and that this defense still remains for the Bank. The Bank has made a business decision to buy peace by offering $5,000 to the Trustee in settlement of the claims brought in the state court suit and to receive a release of all claims that exist or may exist between it and the estate. The Bank considers the $5,000 to be a generous sum, considering that on their original schedules, the Debtors listed the value of the alleged causes of action as "zero" and later amended the value to be "unknown."

Conclusions of Law

1. The Fifth Circuit has clearly set forth what factors the trial court must consider when determining whether a proposed compromise of claims is in the best interest of the estate. The Fifth Circuit has declared:

> To assure a proper compromise the bankruptcy judge must be apprised of all the necessary facts for an intelligent, objective, and educated evaluation. He must compare the "terms of the compromise with the likely rewards of litigation." He must evaluate and set forth in a comprehensible fashion: (1) [t]he probability of success in the litigation, with due consideration

> for the uncertainty in fact and law, (2) [t]he complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (3) [a]ll other factors bearing on the wisdom of the compromise.

In re Jackson Brewing Co., 624 F.2d 599. 602 (5th Cir. 1990); see also In re Matter of Cajun Elec. Power Co-op, Inc., 119 F.3d 349, 355 (5th Cir. 1997) (reaffirming the bankruptcy judge's responsibility to make a well-informed decision in light of the Jackson Brewing factors). Other factors "bearing on the wisdom of compromise" include consideration of whether settlement is in the best interest of the creditors with "proper deference" to the creditors' reasonable views, and whether the settlement is the result of arms-length bargaining or collusion. See Cajun Elec. Power, 119 F.3d at 356. Additionally, the bankruptcy court must evaluate the fairness and equity of the settlement on more than just "unsubstantiated, gratuitous declarations regarding an estate's worth." In re Matter of AWECO, Inc., 724 F.2d 293, 299 (5th Cir. 1984), cert. denied, 469 U.S. 880 (1984). The bankruptcy court is obligated to "act independently, out of its own initiative, for the benefit of all creditors . . . even where the creditors are silent." Id. Thus, "[a]n approval of a compromise, absent a sufficient factual foundation, inherently constitutes an abuse of discretion." Id.

2. Here, the Trustee has proffered clear evidence that the settlement with the Bank is in the best interest of the estate's creditors. The Trustee provided the Court with uncontroverted evidence how he investigated and evaluated each alleged cause of action that the Debtors

assert exist. The Trustee provided the Court with uncontroverted evidence of the great likelihood that none of the causes of action would be successful, should a lawsuit be brought, given the facts and the law working against each of the causes of action. The Trustee provided uncontroverted evidence that, should he pursue a lawsuit of the alleged causes of action, not only would he expend all estate assets in the pursuit of such a suit, but he would forego the opportunity to increase estate assets by the $5,000 settlement offered by the Bank, an amount which will inure to the benefit of other, additional creditors. He provided evidence of the delay and prejudice all creditors of the estate would experience should such a suit be brought, given the financial reality of bringing and paying for the costs of such a suit and the reasonable likelihood that no recovery be had, or if a recovery did occur, the likelihood that the recovery amount would be insufficient to pay the Debtors any funds after the required payments to creditors. The Trustee provided uncontroverted evidence that abandonment of the alleged causes of action was not in the best interests of all estate creditors.

3. The Bank provided uncontroverted evidence that it was making a monetary settlement offer it considered generous and in an amount much more than the alleged causes of action were worth, given the Bank's position that it held viable defenses to all of the claims. However, the Bank made a business decision to buy peace and receive a release of claims.

4. Incorporating all findings of fact herein, and having reviewed the proposed settlement in light of the factors set forth in Jackson Brewing Co., Cajun Elec. Power,

and Matter of AWECO, the settlement is in the best interest of the creditors of the estate, including those with timely-filed and untimely-filed claims. The settlement will be approved over the Debtors' objection thereto. An order so stating will be entered.

SO ORDERED.

SIGNED this 18 day of November, 2004.

s/ Larry E. Kelly
LARRY E. KELLY
UNITED STATES CHIEF BANKRUPTCY JUDGE

APPENDIX D – ORDER OF THE 20th JUDICIAL DISTRICT COURT OF MILAM COUNTY, TEXAS GRANTING PLEA IN ABATEMENT /MOTION TO COMPEL ARBITRATION DATED AND FILED AUGUST 23, 2002

DISTRICT COURT OF MILAM COUNTY, TEXAS, 20th JUDICIAL DISTRICT

CAUSE NO. 28279

SUSAN G. MARTIN and
STEPHEN C. MARTIN,

Plaintiffs

v.

SANDERSON FARMS, INC. and
FARMERS STATE BANK, N.A.,

Defendants

ORDER GRANTING PLEA IN ABATEMENT /MOTION TO COMPEL ARBITRATION

On the 8th day of August, 2002 came on to be heard the Plea in Abatement/Motion to Compel Arbitration filed in this cause by Sanderson Farms, Inc (Production Division). Having considered the evidence submitted, the pleadings on file with the Court and the argument of counsel, the Court finds that there exists a valid arbitration agreement between Susan Martin and Sanderson Farms, Inc. (Production Division), that the claims raised by Susan Martin in this lawsuit fall within the scope of the said arbitration agreement, and that the right to arbitration has not been waived. The parties'

arbitration agreement is, therefore, subject to enforcement in accordance with the provisions of Texas Civil Practice and Remedies Code. The Court is of the opinion that the motion to abate this proceeding and to order the parties to arbitration should be GRANTED.

IT IS, THEREFORE, ORDERED that:
1) Susan Martin and Sanderson Farms, Inc. (Production Division) shall submit to binding arbitration the entire controversy between them in accordance with the terms of the arbitration agreement dated February 19, 1999. The parties are ordered to commence arbitration of their disputes in Dallas, Texas by October 1, 2002.
2) All of the above issues shall be heard and finally determined by the arbitrators selected in accordance with the terms of the arbitration agreement, and arbitration shall result in a final award.
3) This cause is stayed during the pending the arbitration of the matter pursuant to the rules of the American Arbitration Association and in accordance with this order, and the parties shall report back to this Court when those proceedings have terminated.

SIGNED this 23rd day of August, 2002.

s/ Ed Magre
ED MAGRE
JUDGE PRESIDING

APPENDIX E – ORDER OF THE 20th JUDICIAL DISTRICT COURT OF MILAM COUNTY, TEXAS GRANTING PLAINTIFFS' MOTION FOR NONSUIT
DATED AND FILED MARCH 18, 2003

DISTRICT COURT OF MILAM COUNTY, TEXAS, 20th JUDICIAL DISTRICT

CAUSE NO. 28279

SUSAN G. MARTIN and
STEPHEN C. MARTIN, Plaintiffs

v.

SANDERSON FARMS, INC. and
FARMERS STATE BANK, N.A., Defendants

ORDER ON PLAINTIFFS' NONSUIT

CAME ON TO BE HEARD, PLAINTIFFS, Susan G. Martin and Stephen C. Martin, Motion on Plaintiffs' Nonsuit Against Defendants, Sanderson Farms, Inc. and Farmers State Bank, NA. and the Court, having examined the Motion finds that the Motion is in good order and should be GRANTED. IT IS ACCORDINGLY ORDERED that PLAINTIFFS' Nonsuit Against Defendants is permitted.

SIGNED this 18th day of March, 2003.

s/ Ed Magre
ED MAGRE
JUDGE PRESIDING

APPENDIX F – ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, WACO DIVISION – DENYING APPELLANT'S MOTION TO REMOVE THE CASE FROM THE BANKRUPTCY COURT PURSUANT TO 28 U.S.C. § 157(d).

DATED APRIL 23, 2005
FILED APRIL 25, 2005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

DOCKET NO. W-05-CA-007

In Re:
STEPHEN MARTIN and SUSAN MARTIN, Debtors

STEPHEN MARTIN and SUSAN MARTIN,
Appellants

v.

SANDERSON FARMS, INC., JAMES STUDENSKY, and FARMERS STATE BANK,
Appellees

ORDER

Came on to be considered the following motions filed by Appellants: (1) Motion to Dismiss the Trustee's Motion to Compromise and Settle Controversy with Sanderson Farms, Inc., Then Vacate as Moot the February 2, 2005 Order of the Bankruptcy

Appendix F

Court Titled, Interim Order on Chapter 7 Trustee's Motion to Compromise and Settle Controversy with Sanderson Farms, Inc. Pursuant to Bankruptcy Rule 9019; (2) Motion to Vacate the Court's Order Entered March 8, 2005 and Rehear Studensky's Motion to Dismiss Appeal Entered March 4, 2005; and (3) Appellants' Motion for 28 U.S.C. § 157(d) Procedure — Upon Reversal of the Bankruptcy Orders Being Appealed. Appellee Sanderson Farms has additionally filed a Motion to Dismiss Appellants' Motion for 28 U.S.C. § 157 Procedure. Having reviewed the motions, the responses, and the file in this case, the Court is persuaded the Appellants' motions are without merit and should be denied. Appellants' attempted interlocutory appeal was properly dismissed, this Court properly denied any attempt to stay proceedings in the Bankruptcy Court, and there is no legal basis for withdrawing the reference from the Bankruptcy Court Accordingly, it is

ORDERED that Appellants' Motion to Dismiss the Trustee's Motion to Compromise, Motion to Vacate the Court's Order Entered March 8, 2005, and Motion for 28 U.S.C. § 157 Procedure are **DENIED**. It is further

ORDERED that Sanderson Farms' Motion to Dismiss Appellants' Motion for 28 U.S.C. § 157 Procedure is **DENIED** as moot.

SIGNED this 23rd day of April, 2005.

s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
United States District Judge

APPENDIX G – ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, WACO DIVISION – GRANTING TRUSTEE'S MOTION TO DISMISS APPEAL BY STEPHEN MARTIN AND SUSAN MARTIN OF INTERIM ORDER ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH SANDERSON FARMS, INC. PURSUANT TO RULE 9019

DATED AND FILED MARCH 7, 2005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

DOCKET NO. W-05-CA-007
Appeal to the District Court from the Bankruptcy Court's Interim Order entered 2/2/05
Bankruptcy No. 03-61633

In The Matter Of:
STEPHEN CLYDE MARTIN and
SUSAN GAYLE MARTIN,
Debtors/Appellants

ORDER GRANTING TRUSTEE'S MOTION TO DISMISS APPEAL BY STEPHEN MARTIN AND SUSAN MARTIN OF INTERIM ORDER ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH SANDERSON FARMS, INC. PURSUANT TO RULE 9019

Appendix G

On this day, the Court considered the Trustee's Motion to Dismiss Appeal by Stephen Martin and Susan Martin of Interim Order on Chapter 7 Trustee's Motion to Compromise and Settle Controversy with Sanderson Farms, Inc. Pursuant to Rule 9019 and finds that such motion has merit and should be granted.

It is ORDERED that the appeal by Stephen Martin and Susan Martin of Interim Order on Chap er 7 Trustee's Motion to Compromise and settle Controversy with Sanderson Farms, Inc. Pursuant to Rule 9019 is hereby dismissed. It is further ORDERED that the Bankruptcy Court may proceed with a hearing on Trustee's Motion to Compromise Controversy with Sanderson Farms, Inc.

Signed this 7th day of March, 2005.

s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
United States District Judge

APPENDIX H – INTERIM ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TEXAS ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH SANDERSON FARMS, INC. PURSUANT TO BANKRUPTCY RULE 9019, AND TO ALLOW FOR BIDS TO BE RECEIVED FROM ANY PARTY IN INTEREST TO PURCHASE THE CAUSES OF ACTION SOUGHT TO BE COMPROMISED AND SETTLED.
DATED AND FILED FEBRUARY 2, 2005

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS

CASE NO. 03-61633-LEK
Chapter 7 Petition

In Re: STEPHEN CLYDE MARTIN and
SUSAN GAYLE MARTIN, Debtors

INTERIM ORDER ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH SANDERSON FARMS, INC. PURSUANT TO BANKRUPTCY RULE 9019 AND TO ALLOW FOR BIDS TO BE RECEIVED FROM ANY PARTY IN INTEREST TO PURCHASE THE CAUSES OF ACTION SOUGHT TO BE COMPROMISED AND SETTLED

Before the Court is the Trustee's Motion to Compromise and Settle Controversy with Sanderson

Farms, Inc. ("Sanderson Farms") Pursuant to Bankruptcy Rule 9019 filed December 23, 2004 (Doc.#110). No party in interest has filed an objection in writing to said motion. However, because the Debtors are appearing pro se in their bankruptcy case, and because of the prior history of this case, the Court enters this order to clarify the current status of the situation and to allow parties in interest to this case to bid and acquire the estate's interest, if any, in whatever cause of action this bankruptcy estate may own against Sanderson Farms. In light of the pending offer by Sanderson Farms, a counteroffer must be in cash or the equivalent and in an amount higher than that currently offered to the Trustee in settlement of all alleged pre-petition and post-petition causes of action. The estate is not warranting that any such cause of actions exists nor that it is assignable.

The Debtors filed this voluntary chapter 7 on July 14, 2003. Property of their bankruptcy estate pursuant to 11 U.S.C. § 541 includes their alleged cause of action against Sanderson Farms. In the Debtors' schedules of assets filed with their bankruptcy chapter 7 petition, specifically, on Schedule B in answer to question #33, the Debtors indicated that they had a "potential cause of action against Sanderson Farms, Inc and/or Farmer's State Bank," which they valued as having a $0.00 value. See Schedule B of Petition, Answer to Question 33, filed July 14, 2004 (Doc. #2). In a later amended Schedule B, the Debtors listed the value of this asset as "unknown." See Amended Schedule B of Petition, Answer to Question 33, filed September 23, 2004 (Doc. #20). In their schedules of exempt property, the Debtors did not exempt this

alleged cause of action. Additionally, because they claimed the personal property exemptions allowed under state law, Texas law does not allow for this type of asset, a cause of action, to be claimed exempt. See Texas Property Code § 42.002. As a non-exempt asset, this alleged cause of action belongs to the Chapter 7 trustee of the Debtors' estate. "It is true that if a cause of action *belongs* to the estate, then the trustee has exclusive standing to assert the claim." In re Porras, 312 B.R. 81, 94 (Bankr. W.D. Tex. 2004) (citing In re Educators Group Health Trust, 25 F.3d 1281, 1284 (5th Cir.1994), and In S.I. Acquisition, Inc. v. Eastway Delivery Service, Inc. (S.I. Acquisition, Inc.), 817 F.2d 1142, 1153 (5th Cir.1987) (An "alter ego action is a right of action belonging to [the debtor] and, as such, is property of the estate.")). As such, currently, the Debtors have no right nor standing to pursue the causes of action now owned by their bankruptcy estate.

On November 3, 2004, the Court held a hearing on various motions filed by the Debtors. None of those motions asserted any allegations against Sanderson Farms. On November 18, 2004, the Court issued orders on each of the motions. Then, on November 29, 2004, the Debtors filed a notice of appeal to the United States District Court of these orders. The Debtors' pending appeal does not concern nor affect this pending motion to compromise and settle by the Trustee with Sanderson Farms, thus, the Court can consider and rule upon this settlement motion.

In this motion to compromise and settle with Sanderson Farms, the Trustee, as the representative of the estate, is agreeing to accept $5,000.00 from Sanderson Farms as consideration for his agreement to

settle all pre-petition and post-petition claims that the estate may have against Sanderson Farms. In turn, the Trustee, acting on behalf of the estate, will execute a full and final release of all such claims in favor of Sanderson Farms. If the compromise and settlement is approved, this Court will have ended its work on the matter.

Therefore, the Court desires to notify all creditors, the Debtors, and any parties in interest that, should they choose to purchase the alleged cause of action(s) held by the bankruptcy estate against Sanderson Farms, if any exist, they are to submit a bid in writing to the Trustee at his office located at 3912 West Waco Drive, Waco, Texas. Such offer is to be for cash and once approved by the court must be remitted to the Trustee in cash or cashier's check or money order within 10 days of entry of the order approving the offer. Said bids should exceed the $5,000.00 amount offered by Sanderson Farms. All such bids are to be submitted by Friday, February 25, 2005. A hearing will be held for the Court to consider the Trustee's motion to compromise and settle, and, if any bids have been timely made, to consider and possibly approve any bid offers the Trustee has received. The estate is not warranting that any such cause of actions exists nor that it is assignable. It is therefore

ORDERED that a hearing be held on March 9, 2005 at 9:00 a.m. on the Trustee's Motion to Compromise and Settle Controversy with Sanderson Farms and, possibly, on any bid offers that the Trustee may have timely received; it is further

ORDERED that the Clerk of the Court is to send a copy of this order to the Debtors, the Trustee, all creditors, and any other party in interest.

SIGNED this 02 day of February, 2005.

s/ Larry E. Kelly
LARRY E. KELLY
UNITED STATES CHIEF BANKRUPTCY JUDGE